Supreme Court of the United States

[illegible], Secretary, Department of Agriculture,
Petitioner,

v.

[illegible] D. [illegible] and [illegible] Chambers Putman,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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[illegible] Chambers Putman,
Attorneys for Respondents.

Press of Byron S. Adams, Washington, D. C.

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CITATIONS.

CASES:

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 473

CHARLES F. BRANNAN, Secretary, Department of Agriculture,
Petitioner

v.

ROBERT D. ELDER and GREENE CHANDLER FURMAN,
Respondents

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BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 72) is not reported. The opinion of the Court of Appeals for the District of Columbia (R. 88) is reported at 184 F. 2d 219. The cases were consolidated for hearing in the District Court (R. 84) and were briefed and argued together before the Court of Appeals (R. 88).

JURISDICTION

The judgments of the Court of Appeals were entered on June 15, 1950 (R. 96). The Government's petition for rehearing, as well as respondents' petition for modification of the opinion and judgment, were denied on October 2, 1950 (R. 100). The Government requested further stay of the mandate, and such stay was later extended to December 30, 1950. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether veterans are entitled to reinstatement in civilian positions by reason of violation of their right to preference in reinstatement under Section 2 of the Veterans' Preference Act of 1944.

2. Whether veterans are entitled to reinstatement in civilian positions by reason of violation of their rights to preference in retention under Sections 2 and 12 of the Act of 1944.

3. Whether veterans are entitled to reinstatement in civilian positions by reason of violation of their right to preference in retention under Section 12 of the Act of 1944.

4. Whether veterans are entitled to reinstatement in civilian positions by reason of their right to preference in retention under the proviso of Section 4 of the Act of August 23, 1912.

STATUTES INVOLVED

Statutes are set out in Appendix, p. 15.

STATEMENT

These actions were brought by respondents who filed complaints on June 5, 1947, seeking retention over nonveterans in a reduction in force (R. 2, 76, 77, 82). After separation effective June 30, 1947 (R. 60), each filed an amended and supplemental complaint on March 8, 1948 (R. 49-58) alleging wrongful acts of petitioner subsequent to the separation and praying reinstatement in his position of Attorney,

Grade P-3, for a declaratory judgment, and other and further relief (R. 58).

The respondents were honorably discharged from the United States Army after wartime service on active duty in the Infantry—Elder during World War I and Furman during World War II (R. 3, 50, 77). Each of them was one of 14,000 lawyers who took and one of 2,000 who passed the competitive civil service examinations, written and oral, given in September, 1942, and January, 1943, for Attorney positions in the classified civil service (R. 15-16, 56-57, 77-78), and as a result each was placed on the register, certified for probational appointment, and appointed from the register (R. 56-57).

Commencing August 1, 1943, each of the respondents was continuously employed from August 1, 1943, through June 6, 1947, in his position of Attorney, Grade P-3, in the Office of the Solicitor, Department of Agriculture, Washington, D. C., and had at all times efficiency ratings of "good" or better (R. 3, 50, 78). On May 29, 1947, each of the respondents received written notice dated May 29, 1947, stating: "A reduction in force brought about by lack of funds necessitates your being separated effective on or after June 30, 1947, c. o. b. Your last day of active duty in your present position will be June 6, 1947" (R. 4, 8, 51). On *July* 30, 1947, petitioner gave each respondent "formal notification of your separation due to reduction in force effective June 30, 1947" (R. 60, 46).

The respondents' positions have not been abolished, but have been filled by other nonveteran Attorneys, Grade P-3, who since June 6, 1947, have been continuously performing work, functions, and duties which were formerly performed by each of the respondents (R. 50-51, 14). There were eight (8) of these nonveteran Attorneys, Grade P-3, each of whom was carried on petitioner's records as "(1) Without veteran preference with efficiency rating of 'good' or better. (2) Serving under an appointment with the equivalent of permanent competitive status in the clas-

sified civil service."—and each of whom was assigned *"according to tenure of employment"* to the retention subgroup A-2 of the reduction-in-force regulations (R. 48, 51). At the same time each of the respondent veterans was carried on the petitioner's records as "(1) With veteran preference with efficiency rating of 'good' or better. (2) Serving under an appointment for the duration of the war and six months thereafter."—and assigned *"according to tenure of employment"* to the inferior subgroup B-1 (R. 48, 38-39).

The undenied allegations of the amended and supplemental complaints further plead that soon after the reduction in force said to have been due to lack of funds six (6) other nonveteran Attorneys—who were in the still lower retention subgroup B-2 and who had been released at the same time as respondents—were put back to work and each of them thereafter steadily employed in a position of Attorney, Grade P-3, on active duty with pay in said Washington office of the Office of the Solicitor, Department of Agriculture, Washington, D. C. (R. 52-54, 48). That "The employment and continuation in employment by defendant of said six Attorneys, Grade P-3, subgroup B-2, while defendant excluded plaintiff therefrom, was itself in violation of this plaintiff's [respondents'] superior rights to continued employment under Sections 2 and 12 of the Veterans' Preference Act of 1944, and under Section 4 of said Act of August 23, 1912" (R. 53). Each of the aforesaid six nonveteran Attorneys, Grade P-3, subgrade B-2, is expressly named by the allegations (R. 52).

After hearing the District Court entered summary judgments for the respondent Secretary before answer (R. 74), stating in its memorandum opinion: "It seems clear that plaintiff [respondents] was a war service employee and did not have a permanent Civil Service status. His separation was effected in full compliance with the applicable statutes and regulations." (R. 72).

On appeal the Court of Appeals adhered to the same general thesis (R. 88, 184 F.2d 219), upholding the para-

mount overall retention priority effect given "tenure of employment" by the regulations, and holding that respondent's as veterans' preference employees whose efficiency ratings are "good" or better have no preference over any of the eight nonveterans with classified tenure in retention subgroup A-2 above referred to as retained in preference to the respondent veterans (R. 91-92) either under Section 2 or Section 12 of the Act of 1944, or under the proviso of Section 4 of the Act of August 23, 1912 (R. 91).

However, the Court of Appeals reversed the decision below (R. 96-97), ruling that respondents' rights to the preference in reinstatement under Section 2 of the Act of 1944 were violated (R. 93), that the undenied allegations charge wrongful discrimination against the respondent veterans "in the reinstatement of nonveterans in October, 1947" (R. 94), and that on October 27, 1947, both respondents were wrongfully denied reinstatement (R. 95).

ARGUMENT

1. The Respondent Veterans Are Entitled to Reinstatement in Civilian Positions by Reason of Violation of Their Right to Preference in Reinstatement Under Section 2 of the Veteran's Preference Act of 1944, and the Court of Appeals So Held.

(a) Section 2 designates, prescribes and defines five specific preferences which "shall be given" to veterans.

Section 2 of the Act of 1944 provides that: "In certification for appointment, in appointment, in reinstatement, in reemployment, and in retention in civilian positions . . . preference shall be given" to designated categories of veterans, their wives and unmarried widows, in the unclassified civil service as well as in the classified civil service, and in the comprehensive scope throughout the Government therein described and defined.

Petitioner contends that: "Section 2, which the court below apparently assumed conferred specific rights, does

no more than enumerate the classes of persons who shall be entitled to the various employment preferences" (Pet. 7, i.e., *Secretary's Petition*, page 7) and that "The legislative history of the Act establishes beyond question that Section 2 was regarded as simply 'defining the various groups to whom preference [was] to be granted.' " (Pet. 7). The reports of the House and Senate committees and remarks of sponsors of the bill, cited by petitioner, do not sustain these assumptions. In any event, such a twisted paraphrase and repugnant construction would be contrary to the natural import of the terms of Section 2 and inadmissible. *United States* v. *Shreveport Grain & Elevator Co.*, 287 U. S. 77, 83 where this Court said:

> "In proper cases such reports [of committees of the Congress] are given consideration in determining the meaning of a statute, but only where that meaning is doubtful. They can not be resorted to for the purpose of construing a statute contrary to the natural import of its terms (cit. cases). Like other extrinsic aids to construction, their use is 'to *solve*, but not to *create* an ambiguity.' (cit. cases) Or, as stated in *United States* v. *Hartwell*, 6 Wall. 385, 386. If the language is clear it is conclusive. There can be no construction when there is nothing to construe.' "

And in *Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 149, 163, the Court said:

> "* * * and the rule is that expression by the legislature of an erroneous opinion concerning the law does not alter it."

(b) In enacting Section 2 Congress adopted the known and settled construction.

In enacting the Veterans' Preference Act of 1944, Congress borrowed and embodied in the primary Section 2 the key and essential provisions of the veterans' statute of the State of New York—"provisions which had received in that state a known and settled construction before their enact-

ment by Congress''—and accordingly, as further stated by this Court:

> ''* * * that [known and settled] construction must be deemed to have been adopted by Congress together with the text which it expounded, and the provisions must be construed as they were understood at the time in the State.'' *Capital Traction Co.* v. *Hop*, 174 U. S. 1, 36.

The key provisions of the New York veterans' statute are identical with those in the New York Constitution, and each have received the same construction of the same words reading: *''preference shall be given in appointment and promotion.''* Since the year 1900 these provisions have received the known and settled construction to the effect that the sentence italicized, without more, ''creates a preference of retention in employment so long as the positions exist to which they [veterans] have been appointed'' and that ''the right to appointment under such circumstances necessarily carries with it the right to continued employment as against other persons not so protected.'' *Stutzbach* v. *Coler* (1901), 168 N. Y. 416, 419-421, affg. 62 App. Div. 219, 70 N. Y. S. 901, 904-907; *Seeley* v. *Stevens*, 190 N. Y. 158, 160, 166, 82 N. E. 1095, 1096-1098; *People ex rel. Davison* v. *Williams* (1914), 213 N. Y. 213 N. Y. 130, 132, 107 N. E. 49, 50 (Cardozo, J.); *People ex rel. Shields* v. *Scannell*, (1900) 48 App. Div. 68, 73, 62 N. Y. S. 682, 683; *McCloskey* v. *Willis*, 15 App. Div. 594, 44 N. Y. S. 682; *Meenaugh* v. *Dewey, District Attorney*, (1939) 17 N. Y. S. 2d 599, 601; McKinney's Cons. Laws of New York, Ann., Book 9, Civil Service Law, §§ 21, 22.

The aforesaid ''construction . . . together with the text which it expounded'' was affirmed and reiterated by the Court of Appeals of New York in the above cited cases, and is conveniently summarized in the leading case of *Stutzbach* v. *Coler, supra*, (1900) 62 App. Div. 219, 70 N.Y.S. 901, 904-907, where the court said:

"The preference thus intended to be given must be regarded as substantial, and to carry with it every incident necessary to its complete protection and preservation. The preference given in appointment clearly involves in those entitled thereto a right over all other persons not similarly situated. This right, to be of any value whatever, must be a continuing right so long as the position exists to which the veteran is appointed. The purpose of giving him this preference in appointment was to furnish him with employment, and if thereafter he could be immediately discharged, and other persons, not preferred, retained in the position, it is manifest that the intent of the law, which seeks to prefer him, would be entirely defeated. The right to appointment under such circumstances carries with it the right to continued employment as against other persons not so protected."

As said fourteen years later by Mr. Justice Cardozo, speaking for the court:

"It is under that section of the statute that such veterans have been held entitled to preference when a reduction of personnel has become necessary. The determining consideration has been that, to make the preference as to appointment effective, it must be held to be a continuing one during the entire term of service . . . the relator was entitled to reinstatement." *People ex rel. Davison* v. *Williams, supra,* (1914), 213 N. Y. 130, 132, 107 N. E. 49, 50.

The courts of New York are not alone in this construction. In considering regulations based on substantially identical statutory provisions, the Supreme Judicial Court of Massachusetts said:

"* * * they must be so construed as to give to the plaintiff the right to continuous employment in preference to those laborers who were not veterans, so long as there was work to be done of the kind for which he was employed, and as he was competent to perform that work." *Ransom* v. *City of Boston* (1906) 192 Mass. 299, 78 N. E. 481, 484, *id.* 193 Mass. 537, 79 N. E. 823,

824 (1907). See, also *Garvey* v. *City of Lowell* (1908) 199 Mass. 47, 50, 85 N. E. 182, 183; *State ex rel. Castel* v. *Chisholm*, (1925), 173 Minn. 485, 217 N. W. 681, 682; *State ex rel. Tamminen* v. *City of Eveleth* (1933), 189 Minn. 229, 249 N. W. 184, 187; *Womsley* v. *Jersey City* (1898) 61 N. J. L. 499, 39 Atl. 710.

Congress has significantly reinforced the aforesaid, concomitant construction by expressly adding and including in Section 2, among the preferences which "shall be given", the specific preferences (1) in reinstatement, (2) in reemployment, (3) in reappointment, and (4) in certification for appointment—the first three of which it is seen the New York courts had already found it necessary to recognize as existing in the statute and to enforce them although none of these preferences were even mentioned in the New York statute.

In contrast to the confused constructions urged by petitioner, the concomitant construction does not do violence to the phraseology and natural import of the terms used by Congress in Section 2, but makes the natural meaning effective and gives natural and logical sequence to the intention plainly expressed by the language of Section 2.

(c) Section 2 embodies the general policy and purpose of the Act of 1944.

This concomitant construction serves to emphasize the dominant role of Section 2, already indicated by its primary position in the forefront of the Act and by the natural import of its terms. Section 2 not only designates, prescribes, and defines the initial scope of the five specific preferences named therein; it expresses and embodies the general policy and long existing purpose of Congress to grant substantial preference in continued employment in the Government service to the veterans of the Nation's wars and "since the beginning of the Republic to extend certain [*not uncertain and illusory*] benefits to those who have risked their lives in the armed forces during wartime." H. Rept. No. 1289, 78th

Cong., 2d Sess., p. 2; 30 Cong. Record, p. 3502, 78th Cong., March 27, 1944; S.Rept. No. 907, 78th Cong., 2d Sess., p.2.

Having thus expressed and embodied such general policy in Section 2, the Congress was of course at liberty further to amend or define, extend or limit each of the five specific preferences by additional provisions in this or other sections. Under existing law, however, each such additional provision is subject to

> "• • • the elementary rule that exceptions from a general policy which a law embodies should be strictly construed, that is, should be so interpreted as not to destroy the remedial processes intended to be accomplished by the enactment." *Spokane & Island R. Co.* v. *United States*, 241 U. S. 344, 350; *Piedmont & Northern Ry.* v. *Interstate Commerce Commission*, 286 U. S. 299, 311-312.

(d) The rule requires strict construction of exceptions to general policy.

In applying this elementary rule requiring strict construction of such additional provisions, other fundamental principles are especially applicable. Effect must be given, if possible, to each word in a statute, and the words used by Congress in a statute are presumed to be used in their natural and most ordinary sense, and with the meaning commonly attributed to them. *Caminetti* v. *United States*, 242 U. S. 470, 485; *United States* v. *Lexington Mill & Elevator Co.*, 232 U. S. 399, 409-410; *Houghton* v. *Payne*, 194 U. S. 88, 100.

The preference in *reinstatement* is one of five specific preferences which Congress designates, commands "shall be given", and defines in scope by the provisions of Section 2.

In Section 5 Congress further provides:

> "In determining qualifications for examination, appointment, promotion, retention, transfer, or reinstatement, with respect to preference eligibles, the Civil Service Commission or other examining agency shall waive requirements as to age, height, and weight, • • •

Section 5 thus expressly extends the scope of the specific preferences in reinstatemnt, retention, and appointment so that they may partake in the particular benefits of the waivers as to age, height, and weight therein described.

Other than in Sections 2 and 5 *supra*, none of the terms "reinstatement", or reinstate, or instate, occur anywhere else in the Veterans' Preference Act of 1944. It is not to be presumed that this omission was unintentional or accidental. When Congress further defined rights in respect of the preference in reinstatement in Section 5, it did so explicitly, using the Section 2 term "reinstatement" to indicate its intention further to define that specific preference. When it further dealt with the preference in retention in Section 12, it did so explicitly, using the unmistakable term "*shall be retained in preference*". And likewise it referred definitely to "certification" throughout in dealing with the preference in certification for appointment in Section 8.

(c) Remedial rights and processes may not be disposed of by conjecture.

In Section 15 Congress expressly dealt with eligibility for "*recertification and reappointment*". Petitioner insists that under these terms Section 15 "deals specifically with preference in reemployment" (Pet. 2) and, by assumption, that Congress intended by its use of "recertification and reappointment" to delimit or eliminate rights to the specific preference in "reemployment" and also to the specific preference in "reinstatement" (Pet. 2, 8). To acquiesce in such assumptions would be to presume that Congress was indulging in egregious inattention to the striking and essential differences of n[illegible]ural import and practical function existing between each and all of the respective terms used in this statute. [See the appropriate meanings and root-meanings attributed to these words in Webster's New International Dictionary, 2nd Ed.]

The instant case is seen to be one for the often expressed consideration, aiding interpretation, that if a given construc-

tion were intended—i. e. that veterans' rights to the preference in reinstatement granted under Section 2 are to be further defined, limited, or eliminated for all practical purposes under another section of the Act—it would have been easy for the Congress to have expressed such intention in apt terms. *United States* v. *First National Bank of Detroit*, 234 U. S. 245, 262; *United States* v. *Hartwell*, 6 Wall. 385, 386. This the Congress has not done in this statute. Remedial rights and processes may not be disposed of by conjecture. (Cases cited *supra*).

Petitioner argues that the Court of Appeals "reversed the decision below on the ground that Section 2 and the reduction-in-force regulations under Section 12 of the Veterans' Preference Act of 1944 created reemployment rights which 'were violated * * * when other attorneys classified in a lower subgroup than B-1, who had been released with [them] were reemployed' " (Pet. 5), and that the court "applied the standards" of the reduction in force regulations under Section 12 "as the measure of veterans' reemployment rights" (Pet. 6).

On the contrary, in reversing the decision below, the Court of Appeals distinctly and explicitly ruled that it was the respondents' rights under Section 2 of the statute that were violated (R. 93); that the undenied allegations charge wrongful discrimination against the respondent veterans "in the reinstatement of non-veterans in October, 1947" (R. 94); and that on October 27, 1947, both respondents were wrongfully denied reinstatement (R. 95). Moreover, the Court of Appeals ruled that the record does not show that respondents' rights under the reduction-in-force regulations pursuant to Section 12 were violated (R. 92). In view of these definite rulings, further descriptive references to the reinstated nonveterans as in a lower or subgroup B-2 classification under the regulations for retention may not be erected into a ruling that the reduction-in-force regulations under Section 12 created reemployment rights (Pet. 5), or into a ruling that any rights under such regulations were

violated (Pet. 5), or into a ruling that such reduction-in-force regulations under Section 12 are to be applied as the measure of veterans' reemployment rights (Pet. 6). Such descriptive references were manifestly calculated to distinguish the *six* B-2 nonveterans from the *eight* subgroup A-2 nonveterans alleged to have been *retained* since June 6, 1947, in wrongful preference to respondents (R. 51). It is also to be noted that only the specific preference to reinstatement was held by the court to be violated (R. 94, 95).

The undenied allegations above referred to are set out at length by the court in a four-page footnote to the opinion (R. 93-96), and are the same allegations also quoted at length by the Secretary of Agriculture in his motion to strike the same from the amended and supplemental complaint "on the ground that they are immaterial to the issues herein, impertinent and prejudicial" (R. 66-69). This motion to strike was not sustained (R. 72), and the objection was without merit. These allegations fully advised the Secretary of the basis of the complaint against him, gave him actual notice of the issues, and afforded him full opportunity to defend thereon and justify the acts as innocent rather than discriminatory—which is exactly what he tried to do (R. 70-72). His statement here that "the only issues presented related to the validity of respondents' separation" (Pet. 5) is therefore to be regarded as unfounded. *National Labor Relations Board* v. *Mackay Co.*, 304 U. S. 333, 350; *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 228; *United States* v. *Pierce Auto Lines*, 327 U. S. 515, 525.

Under the essentially identical provisions of the New York veterans' statute such allegations—i. e. that nonveterans have been employed or reinstated in preference to a released veteran—have for more than forty years been repeatedly recognized as relevant and material as a decisive element in showing the violation of the veteran's rights under the statute. *People ex rel. Shields* v. *Scannell* (1900), 48 App. Div. 69, 73, 62 N. Y. S. 682, 683; *Meenaugh* v. *Dewey* (1939), 17 N. Y. S. 2d 599, 601.

For the foregoing reasons it does not appear that the decision below, insofar as it reverses the judgment of the District Court, should be reviewed because it interprets erroneously the Veterans' Preference Act of 1944 (Pet. 6). Petitioner further argues that such decision below will operate "in a manner which has a very serious impact on the Federal Government's personnel policies and practices" (Pet. 6). But considerations of this nature or of inconvenience can never sanction a construction at variance with the manifest meaning of the Congress, expressed in plain and unambiguous language. *Evans* v. *Jordan & Morehead,* 9 Cranch, U. S., 199, 203; *United States* v. *Fisher,* 2 Cranch, U. S. 358, 386; *Crooks* v. *Harrelson,* 282 U. S. 55, 60.

CONCLUSION

The judgment of the Court of Appeals insofar as it reverses the judgment of the District Court is correct, and within its scope there is no conflict. The petition for a writ of certiorari in Case No. 478 should therefore be denied.

Respectfully submitted,

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January, 1951

APPENDIX TO BRIEF

The Veterans' Preference Act of June 27, 1944, c. 287, 58 Stat. 387 (5 U. S. C., Supp. V, §§ 851-869) provides in pertinent part as follows:

SEC. 2. In certification for appointment, in appointment, in reinstatement, in re-employment, and in retention in civilian positions in all establishments, agencies, bureaus, administrations, projects, and departments of the Government, permanent or temporary, and in either (a) the classified civil service; (b) the unclassified civil service; (c) any temporary or emergency establishment, agency, bureau, administration, project, and department created by Acts of Congress or Presidential Executive order; and (d) the civil service of the District of Columbia, preference shall be given to (1) those ex-service men and women who have served on active duty in any branch of the armed forces of the United States and have been separated therefrom under honorable conditions and who have established the present existence of a service-connected disability or who are receiving compensation, disability retirement benefits, or pension by reason of public laws administered by the Veterans' Administration, the War Department or the Navy Department; (2) the wives of such service-connected disabled ex-servicemen as have themselves been unable to qualify for any civil-service appointment; (3) the unmarried widows of deceased ex-servicemen who served on active duty in any branch of the armed forces of the United States during any war, or in any campaign or expedition (for which a campaign badge has been authorized), and who were separated therefrom under honorable conditions; and (4) those ex-service men and women who have served on active duty in any branch of the armed forces of the United States, during any war, or in any campaign or expedition (for which a campaign badge has been authorized), and have been separated therefrom under honorable conditions.

* * * * * * * * * * *

SEC. 12. In any reduction in personnel in any civilian service of any Federal agency, competing employees shall be released in accordance with Civil Service Commission regulations which shall give due effect to tenure of employment, military preference, length of service, and efficiency

ratings: *Provided*, That the length of time spent in active service in the armed forces of the United States of each such employee shall be credited in computing length of total service; *Provided further*, That preference employees whose efficiency ratings are "good" or better shall be retained in preference to all other competing employees and that preference employees whose efficiency ratings are below "good" shall be retained in preference to competing nonpreference employees who have equal or lower efficiency ratings: *And provided further*, That when any or all the functions of any agency are transferred to, or when any agency is replaced by, some other agency, or agencies, all preference employees in the function of functions transferred or in the agency which is replaced by some other agency shall first be transferred to the replacing agency, or agencies, for employment in positions for which they are qualified, before such agency, or agencies, shall appoint additional employees from any other source for such positions.

* * * * * * * * * *

SEC. 14. No permanent or indefinite preference eligible who has completed a probationary or trial period employed in the civil service, or in any establishment, agency, bureau, administration, project, or department, hereinbefore referred to shall be discharged, suspended for more than thirty days, furloughed without pay, reduced in rank or compensation, or debarred for future employment except for such cause as will promote the efficiency of the service and for reasons given in writing, and the person whose discharge, suspension for more than thirty days, furlough without pay, or reduction in rank or compensation is sought shall have at least thirty days' advance written notice (except where there is reasonable cause to believe the employee to be guilty of a crime for which a sentence of imprisonment can be imposed), stating any and all reasons specifically and in detail, for any such proposed action; such preference eligible shall be allowed a reasonable time for answering the same personally and in writing, and for furnishing affidavits in support of such answer, and shall have the right to appeal to the Civil Service Commission from an adverse decision of the administrative officer so acting, such appeal to be made in writing within a reasonable length of time after the date of receipt of notice of such adverse decision: *Provided*, That such preference eligible shall have the right

to make a personal appearance, or an appearance through a designated representative, in accordance with such reasonable rules and regulations as may be issued by the Civil Service Commission; after investigation and consideration of the evidence submitted, the Civil Service Commission shall submit its findings and recommendations to the proper administrative officer and shall send copies of same to the appellant or to his designated representative: *Provided further,* That the Civil Service Commission may declare any such preference eligible who may have been dismissed or furloughed without pay to be eligible for the provisions of section 15 of this title.

* * * * * * * * * *

SEC. 18. All Acts and parts of Acts inconsistent with the provisions hereof are hereby modified to conform herewith, and this Act shall not be construed to take away from any preference eligible any rights heretofore granted to, or possessed by, him under any existing law, Executive order, civil-service rule or regulation, of any department of the Government or officer thereof.

The proviso of Section 4 of the Act of August 23, 1912, c. 350, § 4, 37 Stat. 413, 5 U. S. C. A. § 648, provides as follows:

Provided, That in the event of reductions being made in the force in any of the executive departments no honorably discharged soldier or sailor whose record in said department is rated good shall be discharged or dropped or reduced in rank or salary.